

No. 82225-5

SUPREME COURT
OF THE STATE OF WASHINGTON

CITY OF PORT ANGELES, Respondent,

v.

OUR WATER-OUR CHOICE, and PROTECT OUR WATERS,
Petitioners

and

WASHINGTON DENTAL SERVICE FOUNDATION, LLC,
Respondent.

PETITIONERS' ANSWER TO AMICUS CURIAE MEMORANDUM
IN SUPPORT OF PETITION FOR REVIEW

Gerald B. Steel
Gerald B. Steel, PE
Attorneys for Our Water-Our Choice
and Protect Our Waters as Appellants

Gerald Steel PE
7303 Young Rd. NW
Olympia, WA 98502
(360) 867-1166
(360) 867-1166 FAX
geraldsteel@yahoo.com
WSBA No. 31084

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
2009 JAN -5 P 3:41
BY RONALD R. CARPENTER
CLERK

TABLE OF CONTENTS

	Page
A. IDENTITY OF PARTY FILING ANSWER	1
B. PETITIONERS' ANSWER TO AMICUS CURIAE MEMORANDUM	1
C. CONCLUSION	2
CERTIFICATE OF SERVICE	4

TABLE OF AUTHORITIES

RCWs

2 70.142

A. IDENTITY OF PARTY FILING ANSWER

Protect Our Waters ("POW") and Our Water-Our Choice ("OWOC") (collectively "Petitioners") submit Petitioners' Answer to the Amicus Curiae Memorandum in Support of Petition for Review.

B. PETITIONERS' ANSWER TO AMICUS CURIAE MEMORANDUM

Petitioners support the argument provided in the Amicus Curiae Memorandum in Support of Petition for Review ("Memorandum"). In particular, Petitioners wish to highlight the Conclusion of the Memorandum which states:

This Court should accept review of the decision of the Court of Appeals Division II because this decision, if allowed to stand, would prevent people in cities from being able to directly vote on whether or not fluoride and other drugs could be put in their local public water systems.

Memorandum at 10.

Initiatives and referendums on fluoridation in cities that operate municipal water systems have commonly occurred in this state. This Court can take official notice that Proposition #1 in the November 7, 2000 election was an initiative asking if the City of Spokane municipal water system should be fluoridated and Proposition #1 in the November 8, 2005 election was a referendum asking if Resolution No. 42-97, passed by the City Council of the City of Bellingham opposing fluoridation of the municipal water system, should be rejected. There is substantial public interest in this issue and this Court should not allow the Court of Appeals Division II decision to stand without review by this Court.

Petitioners also wish to highlight the argument in the Memorandum that the question of whether the initiatives violate Chapter 70.142 RCW is an issue of “substantive invalidity” that no Court should reach in pre-election review. Memorandum at 5-6. Chapter 70.142 RCW authorizes the State Board of Health to set maximum contaminant levels for public water systems before corrective actions must be taken.

This Court has not decided a local initiative or referendum case that clarifies, for the benefit of the lower courts, the difference in pre-election review between a disallowed “substantive invalidity” challenge and an allowed challenge that an action is beyond the scope of the local initiative power. This Court could provide this clarification in resolving proposed Issue 1 in the Petition for Review.

This is an issue of great public interest because the viability of the local initiative and referendum power rests strongly on limiting the scope of pre-election review to reduce the barriers of obtaining a vote of the citizens. If the barriers are too high, citizens are effectively prevented from exercising the local initiative and referendum powers and are prevented from expressing their first amendment rights. There is substantial public interest in this Court further clarifying just what may be challenged in pre-election review of a local initiative or referendum.

C. CONCLUSION

The Petition for Review in the instant case should be granted because the issues raised are of substantial public interest. There is a current common practice of using initiatives and referendums to decide if city municipal water systems should be fluoridated. The instant case is broader because the

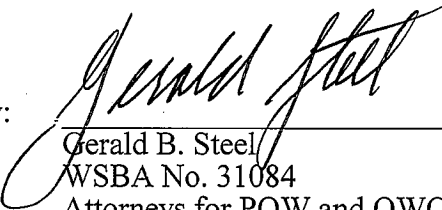
initiatives under review generally address all drugs put into any water system serving the City. The Court of Appeals, Division II, decision would prevent any city with a municipal water system from being able to use the initiative or referendum process to prevent or allow fluoride or other drugs to be added to water systems serving the city. By the many initiatives and referendums already held in this state regarding fluoridation of municipal water systems, the public has expressed a substantial public interest in this issue. The issues raised in the Petition for Review deserve review by this Court.

Dated this 5th day of January, 2009.

Respectfully submitted,

GERALD STEEL PE

By:

A handwritten signature in cursive script, appearing to read "Gerald B. Steel", is written over a horizontal line.

Gerald B. Steel
WSBA No. 31084
Attorneys for POW and OWOC

CERTIFICATE OF SERVICE

I certify that on the 5th day of January, 2009, I caused a true and correct copy of this certificate and the Petitioners' Answer to Amicus Curiae Memorandum in Support of Petition for Review to be served on the following by first class mail:

Counsel for Washington Dental Service Foundation, LLC:

Roger Pearce/P. Steven DiJulio
Foster Pepper PLLC
1111 Third Ave., Ste. 3400
Seattle, WA 98101-3299

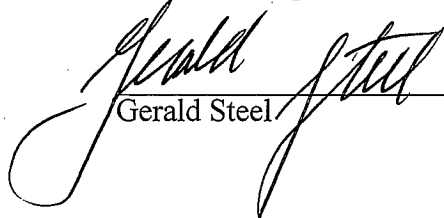
Counsel for the City of Port Angeles:

William Bloor
Port Angeles City Attorney
P.O. Box 1150
Port Angeles, WA 98362

Counsel for Fluoride Class Action

James Robert Deal II
James Robert Deal PS
4130 166th Pl SW
Lynnwood, WA 98037-9027

Dated this 5th day of January, 2009, at Olympia, Washington.


Gerald Steel

OWOC1a5.09